

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

United States of America)
vs.) C/A No.6:05-01137-HMH
Gregory Tobias Thompson,)
Movant.) **OPINION AND ORDER**

This matter is before the court on Gregory Tobias Thompson’s (“Thompson”) motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. In his § 2255 motion Thompson alleges that his attorney failed to file an appeal in accordance with Thompson’s wishes.

An attorney's failure to consult with a client regarding the right to appeal, if the client demonstrates an interest in filing an appeal, constitutes ineffective assistance of counsel. See United States v. Peak, 992 F.2d 39, 42 (4th Cir. 1993). Based on the allegations in Thompson's motion, the court vacates Thompson's sentence and immediately reimposes and reinstates his judgment of conviction. See id. at 41-42. This action will allow Thompson to take a timely appeal pursuant to Rules 4(b) & (c) of the Federal Rules of Appellate Procedure.

Therefore, it is

ORDERED that Thompson's sentence is vacated and his judgment of conviction is immediately reimposed and reinstated with the date of imposition of judgment being the filing date of this order.

IT IS SO ORDERED.

s/ Henry M. Herlong, Jr.
United States District Judge

Greenville, South Carolina
May 9, 2005

NOTICE OF RIGHT TO APPEAL REIMPOSED JUDGMENT OF CONVICTION

Movant is hereby notified that he has **TEN** (10) days from the filing date of this order in which to file a notice of intent to appeal his judgment of conviction, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure. Failure to meet this deadline, as modified within Rule 4, will waive the right to appeal.

The notice immediately below relates only to movant's right to appeal this order and should not be confused with the ten day period in which to file a notice of intent to appeal the judgment of conviction.

NOTICE OF RIGHT TO APPEAL

The movant is hereby notified that he has the right to appeal this order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.